STATE OF MICHIGAN

COURT OF APPEALS

DATAM MANUFACTURING, L.L.C.,

Plaintiff-Appellee,

v

MAGNA POWERTRAIN USA, INC., d/b/a NEW PROCESS GEAR,

Defendant-Appellant.

UNPUBLISHED
February 13, 2014

No. 306202
Macomb Circuit Court
LC No. 2009-000103-CK

Before: STEPHENS, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Defendant, Magna Powertrain USA, Inc., d/b/a New Process Gear (Magna), appeals as of right an opinion and order awarding judgment in favor of plaintiff, Datam Manufacturing, L.L.C. (Datam), following a bench trial. We reverse and remand for entry of a judgment of no cause of action in favor of Magna.

Datam filed this action alleging that Magna, a tier-one automotive supplier, tortiously interfered with Datam's contractual relationship and business expectancy related to the purchase of automotive parts from a supplier in China, Changchun Huifeng Automotive Gear Company, Ltd. (Huifeng). Huifeng produces pre-machined flanges and yokes, which are components of "transfer cases" that are used to provide power to four-wheel drive vehicles. Before the events in this case, Huifeng had supplied the pre-machined parts to MT Precision, L.L.C. (MT) and Tucson Industries, Inc. (Tucson); MT and Tucson hired subcontractors to "finish machine" the parts, which were then supplied to Magna for inclusion in transfer cases. In May 2007, Magna ended its relationship with MT and Tucson, leaving Huifeng with a residual inventory of unsold parts that were pre-machined to Magna's specifications.

The dispute in this case arises from the parties' competing efforts to purchase Huifeng's residual inventory of unsold parts. On June 6, 2007, Huifeng and Magna signed a document that Magna asserted contractually bound Huifeng to ship the residual inventory parts to Magna. However, for reasons that are not pertinent to this appeal, Huifeng refused or otherwise failed to release all of the parts in question to Magna. The trial court concluded from the evidence at trial that Huifeng instead offered to sell the residual inventory parts to Datam, and that Datam intended to sell the parts to American Product Machining (APM), which was a Magna supplier. APM knew that Magna had been unsuccessful in procuring the parts from Huifeng, and APM

had negotiations with Magna concerning Magna's interest in acquiring the parts from APM if APM could procure them from Huifeng. APM indicated to Magna that it could acquire the parts through an unnamed agent. Following these discussions, Magna issued a purchase order for the parts to APM on July 30, 2007. APM issued a purchase order to Datam on the same date, and Datam issued a purchase order to Huifeng.

In the meantime, Magna continued to negotiate directly with Huifeng for the purchase of the parts, ultimately reaching an agreement with Huifeng to release the parts directly to Magna. Huifeng then released the parts to Magna and declined to fulfill the purchase order for these parts with Datam. Datam commenced this action against Magna, alleging claims of tortious interference with a contract or contractual relations and tortious interference with a business relationship or expectancy, and the trial court judgment in favor of Datam followed the bench trial.

Magna argues that the trial court erred in concluding that Datam had established the elements of its tortious interference claims. We agree. A trial court's findings of fact in a bench trial are reviewed for clear error, while its conclusions of law are reviewed de novo. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). Magna has expressly declined to challenge on appeal the trial court's factual findings; Magna instead contests only the court's conclusions of law. Accordingly, our review is de novo.

> In Michigan, tortious interference with a contract or contractual relations is a cause of action distinct from tortious interference with a business relationship or expectancy. The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant. The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. [*Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 89-90; 706 NW2d 843 (2005) (citations omitted).]

"'One who alleges tortious interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another.'" *CMI Int'l, Inc v Intermet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002), quoting *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). "A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances." *Prysak v R L Polk Co*, 193 Mich App 1, 12-13; 483 NW2d 629 (1992). "If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *CMI Int'l*, 251 Mich App at 131.

"'Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.'" *Dalley v Dykema Gossett*,

PLLC, 287 Mich App 296, 324; 788 NW2d 679 (2010), quoting *BPS Clinical Laboratories v Blue Cross & Blue Shield of Mich (On Remand)*, 217 Mich App 687, 699; 552 NW2d 919 (1996). "Mere interference for the purpose of competition is not enough." *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 377; 354 NW2d 341 (1984). Thus, "[i]t generally does not constitute improper interference with a contract if a defendant simply takes the initiative to gain an advantage over the competition." *Knight Enterprises, Inc v RPF Oil Co*, 299 Mich App 275, 282; 829 NW2d 345 (2013) (internal quotation marks omitted). In other words, liability may not be predicated on the fact that the defendant "outbid and outmaneuvered" the plaintiff in purchasing an item from a third party. *Feldman*, 138 Mich App at 377. Rather, the defendant must have done something illegal, unethical, or fraudulent. *Dalley*, 287 Mich App at 324.[1]

In *Meyering v Russell*, 393 Mich 770; 224 NW2d 280 (1974), our Supreme Court adopted the reasoning of the Court of Appeals partial dissent in that case, which had concluded that there was insufficient evidence to support a tortious interference with contractual relations claim. The Court of Appeals partial dissent had explained, in relevant part:

> Other than the perfectly legal act of making an offer to purchase the involved property with knowledge of the [plaintiff's] land contract nothing appears of record which would indicate that [the defendant] resorted to any unlawful methods of competition or used illegal means to obtain the property from [the seller] at [the plaintiff's] expense. [*Meyering v Russell*, 53 Mich App 695, 709-710; 220 NW2d 121 (1974) (O'Hara, J., concurring in part and dissenting in part), adopted by 393 Mich 770 (1974).]

Judge O'Hara further stated that "there must be more than simple outbidding, and even outmaneuvering" and that the defendant in that case had merely made "a more acceptable offer to the fee owner of a parcel of realty." *Id*. at 710.

In *Feldman*, 138 Mich App at 361-362, the plaintiff and the defendants were each engaged in discussions with a third party to purchase three nursing homes. Although the plaintiff had acquired an option to purchase the nursing homes and the option had not expired, the defendants purchased the nursing homes. *Id*. at 362. The plaintiff then filed suit, alleging tortious interference with a contractual relationship. *Id*. This Court upheld the grant of summary disposition to the defendants. *Id*. at 369. This Court found no genuine issue of material fact regarding whether the "defendants' means of competition for the nursing homes unjustifiably and maliciously invaded" the plaintiff's contractual relationship with the third party. *Id*. at 370. This Court relied in part on our Supreme Court's decision in *Bahr v Miller Bros Creamery*, 365 Mich 415; 112 NW2d 463 (1961). The *Feldman* Court explained:

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[1] The principle discussed in the above paragraph, i.e., that a defendant's actions motivated by legitimate business reasons generally do not reflect or constitute an improper motive or interference, applies to both intentional interference with contractual relations claims, *Knight Enterprises*, 299 Mich App at 282; *Wood v Herndon & Herndon Investigations, Inc*, 186 Mich App 495, 500; 465 NW2d 5 (1990), and intentional interference with business relationship claims, *Dalley*, 287 Mich App at 324.

> In *Bahr*, the plaintiff milk supplier brought suit against defendant for tortiously procuring a breach between plaintiff and three drivers who previously had been milk route drivers handling plaintiff's products. The drivers discontinued carrying plaintiff's products and entered into a more profitable arrangement with defendant. The trial court granted defendant's motion for judgment notwithstanding the verdict of the jury which awarded plaintiff damages. The trial judge made the following findings in support of the order:
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> "There is absolutely no evidence of any fraud or misrepresentation on the part of any of the defendants, no force or no coercion, no inducements of any kind other than those held out to all other Miller Brothers distributors. No special inducements were held out to the drivers in question. The fact that Miller Brothers[']s] arrangements with their independent drivers was more favorable to the drivers than was given by the Utica Dairy to their drivers might be an inducement, but a perfectly legal one and open to all drivers."
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> The Supreme Court affirmed the reasoning of the trial judge. The Court reasoned that acts are unlawful when "done to accomplish an unlawful purpose." [*Feldman*, 138 Mich App at 375-376 (internal citations omitted).]

In light of *Bahr* and other precedent, the *Feldman* Court concluded that the plaintiff's allegations in *Feldman* were insufficient: "Plaintiff admits that the sole basis for bringing the complaint rested in the fact that defendants had outbid and outmaneuvered him in purchasing the nursing homes. The law in Michigan has not been expanded to adjudge liability on this basis." *Id*. at 377. In sum, "the placing of another offer to purchase is not per se a violation." *Id.* at 379.

Also instructive in evaluating the instant case is this Court's decision in *Hutton v Roberts*, 182 Mich App 153; 451 NW2d 536 (1989). In *Hutton*, the defendants, Thomas Richardson and Ann Richardson, negotiated with Ronald Roberts for the purchase of Roberts's home after the plaintiffs and Roberts had already contracted to sell the same property to the plaintiffs. *Id*. at 155. The plaintiffs sued the Richardsons for tortious interference with contractual relations. *Id*. A jury awarded damages to the plaintiffs, and the trial court denied the Richardsons' motions for directed verdict and for judgment notwithstanding the verdict. *Id*. at 154. This Court reversed the denial of a directed verdict regarding the tortious interference claim. *Id*. at 162. After discussing case law including *Meyering* and *Feldman*, the *Hutton* Court explained:

> In cases of competing purchase agreements over the same piece of property, the rule is that "the placing of another offer to purchase is not per se a violation." *Feldman*, *supra*, p 379. Consistent with the case law discussed above, it is instead necessary to show some active solicitation or encouragement of a breach of an already existing contract, accompanied by and corroborative of a malicious, unjustified purpose to inflict injury. The act of making an offer or accepting an offer of another in violation of the other's contractual obligations is, by itself, not enough. [*Hutton*, 182 Mich App at 158-159.]

The *Hutton* Court concluded that the Richardsons "did nothing more than make an offer in the hope that plaintiffs' prior purchase agreement with Roberts would fall through." *Id*. at 160.

> There is no specific evidence of "affirmative acts by the interferor which corroborate the unlawful purpose of the interference." *Feldman*, [138 Mich App at] 370. Rather the evidence demonstrates only that the Richardsons acted in pursuit of the entirely legitimate purpose of acquiring the residence for themselves. The fact that they succeeded, without a showing of some demonstrated improper or malicious motivation, is no cause for them to be answerable to plaintiffs in tort. [*Hutton*, 182 Mich App at 160-161.]

Further, even when one has knowledge of a competing/conflicting contact, and still places another offer to purchase, that person is not liable for tortuous interference with a contract. The *Hutton* Court relied upon the following language from 4 Restatement Torts, 2d, § 766, comment n, p 14:

> One does not induce another to commit a breach of contract with a third person under the rule stated in this Section when he merely enters into an agreement with the other with knowledge that the other cannot perform both it and his contract with the third person. . . . For instance, B is under contract to sell certain goods to C. He offers to sell them to A, who knows of the contract. A accepts the offer and receives the goods. A has not induced the breach and is not subject to liability under the rule stated in this Section. [*Hutton*, 182 Mich App at 161, quoting 4 Restatement Torts, 2d, § 766, comment n, p 14.]

Because the defendant did nothing more than make a subsequent offer to purchase, there was no "impropriety," and this Court reversed the denial of a directed verdict regarding the tortious interference claim. *Hutton*, 182 Mich App at 161.

However, not every competing offer to purchase will be considered proper. One "may not, with impunity, sabotage the contractual agreements of others[] and . . . cry that its actions were motivated by purely business interests" and thereby shielded from liability. *Jim-Bob, Inc v Mehling*, 178 Mich App 71, 96; 443 NW2d 451 (1989). In assessing the propriety of a defendant's actions, such factors should include "(1) the nature of the defendant's conduct, (2) the nature of the plaintiff's contractual interest, (3) the social utility of the plaintiff's and the defendant's respective interests, and (4) the proximity of the defendant's conduct to the interference." *Id.* at 97.

Thus, for tortuous interference with a contract, the act of making a competing offer is not per se a wrongful act, but a wrongful act can be established if the evidence shows the competing offer was made with malice, ill motivation, or unlawful purpose. Here, the trial court's factual findings fail to establish that Magna improperly interfered in Datam's contractual or business relationship with Huifeng or APM. The trial court found that Magna knew an unnamed agent of APM was attempting to purchase the residual inventory parts from Huifeng, Magna issued a purchase order to APM for the parts, and Magna then continued to negotiate independently with Huifeng for the same parts, ultimately reaching an agreement with Huifeng to acquire the parts.

Because Magna does not challenge the trial court's factual findings on appeal, we accept as true the finding that Magna knew of Datam's contract and relationship with Huifeng and APM.[2] Such knowledge by itself, however, does not provide a basis for imposing liability. *Hutton*, 182 Mich App at 161. Magna did not commit an inherently wrongful act or an affirmative act corroborating an unlawful purpose for its actions. At most, Magna "outbid and outmaneuvered" Datam in purchasing the parts from Huifeng; such conduct by itself fails to corroborate an improper motive. *Feldman*, 138 Mich App at 377. There is no evidence that Magna did anything that was illegal, unethical, or fraudulent to induce or coerce Huifeng into selling the parts to Magna rather than Datam. In essence, Magna and Datam were competing to purchase the same parts from Huifeng, and the fact that Magna gained a competitive advantage in acquiring the parts does not establish improper interference. *Knight Enterprises*, 299 Mich App at 282.

Further, Magna's issuance of a purchase order for the same parts to APM did not constitute an improper interference into Datam's contract or relationship with Huifeng or APM. The trial court failed to articulate how issuing a purchase order to APM instigated a breach of Datam's contract with Huifeng or otherwise interfered in the relationship. To be sure, Magna, by issuing a purchase order for the same parts to APM, exposed itself to a potential breach of contract claim by APM, given that Magna instead acquired the parts directly from Huifeng.[3] Likewise, Datam may have had a breach of contract remedy against Huifeng if, as the trial court found, Huifeng breached its contract with Datam.[4] But because Magna's purchase order to APM did not with malice, ill motivation, or unlawful purpose induce or influence Huifeng to breach its contract or terminate its relationship with Datam, the purchase order fails to support Datam's tortious interference claim against Magna.

Finally, the trial court's reference to Magna's alleged history of mistreating its suppliers does not establish that Magna improperly interfered in Datam's contract or business relationship. There is no evidence that Datam was ever a Magna supplier or that Magna mistreated Datam. Evidence was presented at trial regarding Magna's so-called "Sam Fox" project, a strategy to eliminate intermediate suppliers from Magna's supply chain if the suppliers did not meet Magna's delivery and quality requirements. The trial court found that Magna was secretly planning to terminate its relationship with APM shortly after signing a three-year supply contract

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[2] We note here that Magna has failed to cite authority establishing that its lack of knowledge of the *identity* of APM's unnamed agent precludes a finding that Magna had knowledge of that agent's contract or relationship with Huifeng and APM. Given that it is undisputed for purposes of this appeal that APM had informed Magna employees that APM was negotiating with Huifeng through an unnamed agent, and that Magna's subsequent issuance of a purchase order for the parts to APM, we cannot conclude that the trial court's finding was clearly erroneous.

[3] Indeed, the record reflects that APM filed a lawsuit against Magna alleging a breach of contract claim related to this purchase order, among other claims. According to Magna, APM's lawsuit against Magna was settled amicably.

[4] The record does not indicate whether Datam pursued a claim against Huifeng.

with APM. Even if evidence of the Sam Fox project was properly admitted, these facts establish, at most, that Magna had a strategy to end its contracts with certain suppliers such as APM; it does not tend to establish that Magna had a plan or scheme to improperly interfere in contracts or relationships of Datam, which was *not* a Magna supplier, or that Magna's actions in acquiring the parts at issue were part of any such plan or scheme. In short, the transaction at issue in this case concerned the parties' competitive efforts to acquire a discrete set of parts, rather than a termination of the type of long-term supply contract allegedly encompassed by Magna's Sam Fox project.

Accordingly, we hold that the trial court erred in concluding that Datam established its tortious interference claims. The facts found by the trial court fail as a matter of law to establish that Magna unjustifiably instigated Huifeng's breach of its contract with Datam or that Magna intentionally induced a breach or termination of Datam's business relationship or expectancy with Huifeng or APM. In light of our resolution of this issue, we need not address the other issue raised by Magna on appeal.

Reversed and remanded for entry of a judgment of no cause of action in favor of Magna. We do not retain jurisdiction. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ Kurtis T. Wilder
/s/ Donald S. Owens